

STATE OF CALIFORNIA
DEPARTMENT OF CORPORATIONS

FINAL TEXT OF PROPOSED CHANGES
UNDER THE FRANCHISE INVESTMENT LAW
PURSUANT TO NOTICE OF PROPOSED CHANGES
DATED: February 7, 2003

1. Amend Section 310.114.1 to read:

310.114.1. Offering Circular

(a) General. Each offering circular shall contain the information required by the Uniform Franchise Registration Application, as defined in Section 310.111(b), and as modified by this section.

(b) Manner of Presenting Information. Present the information in the offering circular in a clear, concise fashion that is readily understandable by a person unfamiliar with the franchise business. Define the franchisee as "you" in Item 1 and use this description throughout the offering circular. In Item 1 use the word "we," initials or one or two words to refer to the franchisor. Use different initials or a different one or two words to refer to other persons contracting with the franchisee under the franchise agreement. Except in the 23 Item titles, use these initials or word(s) to describe these persons or entities throughout the offering circular.

(c) California Instructions for the UFOC.

~~4.~~ (1) ~~A~~ preface or an appendix to the UFOC must state: "THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE OFFERING CIRCULAR".

~~2.~~ (2) "Salesman Disclosure Form" and Item 3.A of the Body of the UFOC: In an initial application to register the offer and sale of a franchise, do not disclose a pending action involving an arrest that did not result in conviction or plea of nolo contendere.

~~3.~~ (3) ~~An appendix to the UFOC or Item 3.C of the Body of the UFOC:~~ In addition to the information required by Item 3.C, state whether the franchisor, any person or franchise broker in Item 2 of the UFOC is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in ~~such that~~ that association or exchange. The information required by this provision may be included in Item 3 or in a preface or an appendix, which is part of the offering circular. If the information is in a preface or an appendix, a reference to the preface or appendix shall be prominently set forth in Item 3.

~~4.~~ (4) Item 5: If the initial fee can vary, include a mathematical formula which enables the franchisee to calculate the specific dollar amount of the franchise fee.

~~5.~~ (5) Item 17: Additional Paragraph(s) Required. The paragraph(s) required by this provision may be included in Item 17 or ~~set forth~~ in a preface or an appendix, which is part of the offering circular. If the paragraph(s) are ~~set forth~~ in a preface or an appendix, a reference to the preface or appendix shall be prominently set forth in Item 17.

~~A.~~ (A) In addition to the information required by Item 17, all offering circulars shall contain the following paragraph:

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control. ~~Business and Professions Code Section 20040.5 relating to forum selection clauses restricting venue outside the State of California for arbitration may be preempted by the Federal Arbitration Act. Section 20040.5 may still apply to any provision relating to judicial proceedings.~~

~~B.~~ (B) If the franchise agreement contains one or more of the provisions referred to in the following paragraph(s), the appropriate paragraph(s) shall be included:

i. The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).

ii. The franchise agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

iii. The franchise agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

iv. The franchise agreement requires binding arbitration. The arbitration will occur at (indicate sites) with the costs being borne by (explanation). ~~This provision may not be enforceable under California Law generally applicable contract defenses, such as fraud, duress, or unconscionability.~~ Franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as

Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

v. The franchise agreement requires application of the laws of (indicate jurisdiction). This provision may not be enforceable under California law.

~~6. (6)~~ Item 19: If any earnings claim is made, and the earnings claim figure(s) does (do) not include either costs of sales or operating expenses, then, in addition to the information required by Item 19, all offering circulars shall contain the following statement prominently set forth in Item 19 or set forth in a preface or an appendix, which is part of the offering circular. If the statement is set forth in a preface or an appendix, a reference to the preface or appendix shall be prominently set forth in Item 19: "The earnings claims figure(s) does (do) not reflect the costs of sales, ~~or operating expenses,~~ or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. ~~The best source of cost and expense data may be from franchisees and former franchisees, some of whom may be listed in Item 20B.~~" You should conduct an independent investigation of the costs and expenses you will incur in operating your (franchised business). Franchisees or former franchisees, listed in the offering circular, may be one source of this information."

Note: Authority cited: Section 31502, Corporations Code. Reference: Sections 31110, 31111, 31114, 31119, and 31125, Corporations Code.

2. Add Section 310.156.3 to read:

310.156.3. Exemption for Internet Advertisements.

(a) Any communication made in connection with an offer or sale of a franchise posted on a website on the Internet ("Internet advertisement") is exempt from the requirements of Corporations Code Section 31156 for filing advertisements with the Commissioner provided a franchisor complies with all of the following:

~~1. No later than December 31 each year, (1) The franchisor files with the Commissioner a written notice, executed by the chief executive officer of the~~ an officer or general partner of the franchisor having direct responsibility for the conduct of the franchisor's activities, and verified pursuant to Section 2015.5 of the Code of Civil Procedure, that includes:

~~A. (A) The Uniform Resource Locator ("URL") address or similar address or device identifying the location of any Internet advertisement;~~

~~B. (B) A statement that the franchisor, or anyone acting with the franchisor's knowledge, agrees to comply with the California Franchise Investment Law , and Rules thereunder, when posting any Internet advertisement on a website by the franchisor, or anyone acting with the franchisor's knowledge, complies with the California Franchise Investment Law; and~~

~~C. (C) The franchisor's name, address, telephone number, and contact person.~~

~~2. (2) The Internet advertisement is not directed to any person in the State of California by or on behalf of the franchisor or anyone acting with the franchisor's knowledge. For the purposes of this section, "directed to any person in the State of California," means directed to a specifically named person, or group of persons, and not to the public generally, and includes, but is not limited to, non-passive forms of~~

communication such as e-mail, instant messages, or other similar modes of communication.~~;~~ and

~~3.~~ (3) The Internet advertisement franchisor's offering circular includes the URL address of the franchisor's website, and the following statement, in clear readable type, of not less than 12-point size:

THIS OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF CORPORATIONS. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF CORPORATIONS at www.corp.ca.gov.

(b) Any notice filed in compliance with subsection (a) shall be effective from the date the notice is filed with the commissioner until the end of the franchisor's registration period, as specified in Section 310.120. The exemption may be renewed for additional periods of one year by submitting to the commissioner no later than the end of the franchisor's registration period, as specified in Section 310.120, an additional written notice that complies with the requirements of subsection (a).

~~(b)~~ (c) Nothing in this regulation shall be construed to limit the Commissioner's authority to bring any action against any person violating any of the provisions of the California Franchise Investment Law.

Note: Authority cited: Sections 31156 and 31502, Corporations Code.
Reference Sections 31111 and 31156, Corporations Code.

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